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SIPDIS

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SUBJECT: NEXT STEPS ON TIP IN VIETNAM: LEGAL REFORM

REF: 03 HANOI 2323

1. Summary: The Ministry of Justice (MOJ) has the outline of a plan of action to reform TIP legislation in conformity with UN standards and to deal with the problem more effectively. The Ministry of Public Security (MPS) is on board but has some concerns about implementation. The plan is a direct result of a USG-funded TIP assistance project. End summary.

U.S.-FUNDED UN PROJECT MAKES IT POSSIBLE

2. (U) The USG-supported UNODC project "Preventing and Combating Trafficking in Persons in Vietnam" is on budget and on schedule and has delivered its first results: a completed assessment of the TIP-related legislative and regulatory framework in Vietnam in comparison with the UN Convention Against Transnational Organized Crime and Protocols on Trafficking in Persons and Smuggling of Migrants. In a workshop March 15-16, a wide range of participants discussed the results of the assessment and the implications for the future. UNODC worked closely with the MOJ to produce the legal assessment, which was one of the key outputs of UNODC project FS/VIE/03/R21, funded with USD 288,200 of G/TIP money. UNODC's partners from MOJ carried out the main work on the assessment, led by Deputy Director General Nguyen Cong Hong of MOJ's Department for Criminal and Administrative Legislation.

3. (U) DDG Hong told poloff March 15 that there was high-level political support for the project within the MOJ partly because it was consistent with Deputy Prime Minister Pham Gia Khiem's instructions to the interagency community in September 2003 (reftel) but also because the project was compatible with Vietnam's larger legal reform goals. As MOJ Vice Minister Hoang The Lien said at the beginning of the workshop, "trafficking in persons has become a painful problem that the state and party have recognized and are committed to resolving."

HIGH LEVEL ATTENDANCE

4. (U) Troels Vester, program officer at UNODC with responsibility for the R21 project, said the wide range of relatively senior officials who attended the workshop was indicative of GVN support for the initiative. Represented at at least the Departmental Deputy Director General level were: MOJ; the Criminal Police and Legal Departments of MPS; the Hanoi People's Court; the Border Army; the Vietnam Lawyers' Association; Vietnam National University; the Department for Social Evils Prevention of the Ministry of Labor, Invalids, and Social Affairs (MOLISA); the Committee for Population, Family, and Children; the Ministry of Foreign Affairs; and the Vietnam Tourism Administration. In addition to GVN officials, there were many representatives from international organizations and NGOs, including UNICEF, the ILO, IOM, the Asia Foundation, and the French-Vietnamese Legal House. At the closing dinner, Deputy Director General of the General Department of Police Major General Cao Ngoc Oanh praised the project, endorsed its stated goals, and pledged police cooperation on trafficking in persons.

KEY RECOMMENDATIONS AND A SIX-POINT ACTION PLAN

5. (U) The legal assessment reviewed Vietnamese law in the context of the UN Convention Against Transnational Organized Crime and Protocols on Trafficking in Persons and Smuggling of Migrants and identified each area where Vietnam needed to change or enhance current law to improve its effort to combat TIP. According to Hoang Van Lai, National Project Coordinator for the project (and simultaneously an MPS Colonel assigned to Vietnam's Interpol office), the key recommendation/conclusion of the legal assessment was that "there is a need for a comprehensive system of legal instruments as well as social, economic measures and common efforts of society to prevent the potential for and eliminate the root causes of the phenomenon of trafficking, and to create safe conditions for the victims. In addition, because of the transnational nature of trafficking, the prosecution of traffickers cannot take place solely at the national level, but requires bilateral and multilateral

cooperation among relevant national law enforcement authorities. Therefore, there is a greater need to harmonize relevant domestic laws and other regional and international legal bases to create conditions for regional and international cooperation in this matter."

16. (U) In his presentation during the workshop, DDG Hong identified the six points of focus that the GVN had taken from the assessment as a kind of "action plan" for legal reform related to TIP. They were:

- Harmonize Vietnamese law with relevant international conventions;
- Agree on a definition of trafficking and specific criminal acts of trafficking as well as a mechanism for interagency cooperation to allow the investigation and prosecution of traffickers;
- Establish the legal authority for the protection of witnesses and victims of trafficking;
- Facilitate the repatriation and reintegration of victims of international trafficking and resolve problems relating to legal jeopardy for trafficking victims;
- Promote international and regional cooperation to combat TIP;
- Address the problems at the source of trafficking in persons: poverty and difficult economic circumstances.

17. (U) DDG Hong told poloff that, of the six points of focus, some could be dealt with by "closing gaps" in the Penal Code. This would be a "quick" solution and could be accomplished by means of a circular from the Standing Committee of the National Assembly rather than full amendment of existing legislation, he said. Other changes would be "medium term" and would involve creating or changing legislation directly affecting TIP; this could happen "reasonably quickly, perhaps in 6-18 months," Hong added. He added that deeper structural changes - resolving contradictions within the legal code, negotiating legal assistance treaties with other countries, or ameliorating the socioeconomic root causes of trafficking - were problems requiring a "long-term approach." Despite the different timeframes for action, Hong promised that "we are working on all of these problems."

MPS CONCERNED ABOUT IMPLEMENTATION -----

18. (U) The mood at the workshop was optimistic and positive, with the exception of Tran Dinh Nha, Director General of MPS' Legal Department. Nha was critical of Vietnam's past efforts to implement international conventions and agreements that it had signed and ratified, and said that if Vietnam's accession to the UN Convention Against Transnational Organized Crime were to have any effect at all, the legislative changes would have to be accompanied by operational changes, a political commitment to implementation, and dedication of scarce resources to the problem. Despite the cautionary tone of his remarks, Nha later said that he still believed that the legal assessment was useful and necessary, and that signing and ratifying the UN Convention and associated protocols were positive steps. "If Vietnam signs the protocol it may not be implemented," he noted, "but if Vietnam does not sign the protocol, it certainly will not be implemented."

19. (U) Comment: UNODC, working with a Canadian legal consultant, facilitated MOJ's comprehensive program for legal reform with this assessment. The associated workshop brought together the rest of the interagency players and appears to have achieved their buy-in to MOJ's plan. MPS' concurrence with the plan and the participation in the workshop of the Legal DG as well as the head of MPS' new anti-trafficking unit will help ensure that MOJ's reforms will have interagency support, since MPS has the lead in the interagency TIP effort. Post will forward a copy of the English language version of the assessment, as well as a matrix of the areas identified for reform and recommended solutions, to EAP/BCLTV, EAP/RSP, INL/AEE, and G/TIP.BURGHARDT